Petition

81-1542

Office - Supreme Court, U.S.
FILED
JAN 27 1982
ALEXANDER L. STEVAS,
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

STANLEY C. MAZALESKI, *ET AL.*,

Petitioners,

v.

RICHARD S. SCHWEIKER, SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES, *ET AL.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

STANLEY C. MAZALESKI, *PRO SE*
3931 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

Washington, D.C. • THIEL PRESS • (202) 638-4521

QUESTIONS PRESENTED

1. Is it proper for a court to rule on a motion for summary judgment when questions of constitutional facts, no equal protection for some 6000 U.S. Public Health Service Commissioned Corps Officers, and standing for appellant, remain in serious dispute?

2. Are Commissioned Corps Officers, doing same or similar work, duties, and jobs denied access to similar or equivalent civil service protection?

3. Does denial of these constitutional rights have a rational basis?

4. Does this denial of constitutional rights constitute a violation of the Equal Protection Clause of the Fourteenth Amendment, as incorporated into the Fifth Amendment?

5. Did this U.S. Court of Appeals in 79-2470 conflict with itself regarding the Equal Protection issue earlier as a meritorious claim, downgrading it later at final adjudication for political purposes, disallowing oral argument, written opinion, locking out *de novo* due process argument in 75-1817 for trial, and allowing obstruction of justice by the U.S. Attorney's Office to go unabated?

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IN THE

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OCTOBER TERM, 1981

STANLEY C. MAZALESKI, *ET AL.*,

Petitioners,

v.

RICHARD S. SCHWEIKER, SECRETARY,
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *ET AL.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners respectfully request that a writ of certiorari issue to review the decision of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on September 30, 1981.

OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit has not been reported and is reproduced as Appendix A. The Court of Appeals for the

District of Columbia Circuit denied petitioners' Petition for rehearing and suggestion for rehearing *en banc* on October 30, 1981. These are reproduced as Appendix B and C respectively.

JURISDICTION

The petition for rehearing and suggestion for rehearing *en banc* was denied on October 30, 1981, and this petition for a writ of certiorari was filed within 90 days of the date of the denial of the petition. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment to the United States Constitution:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> Article III, Section 2(1). The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—". . . to Controversies to which the United States shall be a party . . . ."

Title 5, United States Code *et seq.*

STATEMENT OF THE CASE

The statement of this case is summarized in part in the Memorandum Opinion and Order in 75-997 by Judge Aubrey E. Robinson, Jr., United States District Judge, dated November 6, 1979 and is reproduced as Appendix D. "This case has a long and troubled history. Plaintiff was terminated as an officer in the Commissioned Corps of the Public Health Service on June 6, 1975. On June 5, 1975, and June 20, 1975, Plaintiff filed two suits in which he challenged the dismissal on constitutional grounds. In the first suit (Mazaleski I), Plaintiff alleged that Defendant terminated him because he was a "whistleblower," thus, violating his First Amendment rights, and that the procedures employed to terminate him violated his Fifth Amendment Due Process Rights. In the second suit (the instant case) Plaintiff alleged that the termination procedures violated his Fifth Amendment Equal Protection rights. On July 20, 1975, the trial judge (Judge John Sirica) dismissed Mazaleski I for failure to state a cause of action. On September 15, 1975, this Court held that *Mazaleski II* was barred due to *res judicata.* On April 26, 1977, the Court of Appeals remanded *Mazaleski I.* On March 26, 1979, the Court of Appeals vacated this Court's finding of *res judicata,* and remanded *Mazaleski II* "for consideration of the equal protection issue and for such further consideration and proceedings as the District Court deems advisable." On the issue of "Standing" (Appendix D, page 10a, the District Court granted summary judgment to defendants, incorrectly stating that '. . . Plaintiff is no longer with the PHS, and does not seek *reinstatement* [emphasis added] as a relief for his alleged injuries . . . .'"

The lower court grossly erred November 6, 1979 by ignoring *prima facia* evidence, Dr. Mazaleski's written appeal (3 pages with copies to Secretary Califano, President Carter, Vice President Mondale) to Julius B. Richmond, M.D., Assistant Secretary for Health and Surgeon General, U.S. Public Health Serivce, HEW, dated November 8, 1978. A check of the official court records before the U.S. District Judge shows that this most important *prima facia* document on request for reinstatement was before that court, and the Court of Appeals, as (Appendix E) official record, and could not have been missed. Appellant had standing, had requested it, it was in the court records, both lower and Appeals Court, and the Appeals Court in 75-1817 Judgment April 26, 1977 overturning Judge Sirica on Freedom of Speech and Administrative error also gave appellant standing. Appellant also met the conditions of Article III, Section 2(1) as described above and in Attorney Kent's court filings of August 20, 1979 to wit: "*II. Dr. Mazaleski has Standing to Maintain this Class Action.* Plaintiffs concede that the named plaintiff in a class action must show that he personally has been injured in order to demonstrate his standing to sue; injury to other, unidentified members of the class will not suffice. *Warth v. Seldin,* 422 U.S. 490, 502 (1975). Plaintiffs submit, however, that Dr. Mazaleski has not only been injured in fact but also meets all other applicable tests of standing.

The test for standing imposed by the "case or controversy" requirement of Article III of the Constitution were adumbrated by the Supreme Court in *Simon v. Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26 (1976), and *Village of Arlington Heights v. Metropolitan Housing Development Corp.,* 429 U.S. 252 (1977). The requirements have been clarified to some extent, but not entirely, during the last two terms of

the Supreme Court. In *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 483 U.S. 59 (June 26, 1978) (Burger, J.) (holding that respondents had standing to challenge the constitutionality of the Price-Anderson Act under the Fifth Amendment), the Court declared:

> The essence of the standing inquiry is whether the parties seeking to invoke the court's jurisdiction have "alleged such a personal stake in the outcome of the controversy as to assume that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962). As refined by subsequent reformulation, this requirement of a "personal stake" has come to be understood to require not only a "distinct and palpable injury," to the plaintiff, . . . but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct.

Attorney Kent went on further and stated, ". . . In the case at bar, the named plaintiff, Dr. Stanley Mazaleski, has clearly suffered a 'distinct and palpable injury'; he was, in effect, fired from his position as a reserved Commissioned Officer in the Public Health Service Corps and endured eighteen months of unemployment before finding a job with the EPA, a job which may be temporary. He is still harassed as a result of his perseverance in pursuing the individual and class actions; his work is closely monitored, his phone has recently been wiretapped, and his dog has been poisoned three times in the last two months . . . ." "

Appellant further submits that the Court of Appeals decision is in conflict with the Supreme Court decision in *Gross v. Lopez*, 419 U.S. 565 (1975), and *Paul v. Davis*, 424 U.S. 693 (1976), and the 14th Amendment,

and that the Court of Appeals seriously prejudiced themselves in unfairly adjudicating and undercutting this class action because of political reasons, and did irreparable injury in bad faith to appellant and some 6000 fellow Commissioned Corps Officers as explained and reproduced in Appendix F "*PETITION FOR REHEARING* AND SUGGESTION FOR REHEARING *EN BANC* No. 79-2470 denied October 30, 1981 not on the merits and material facts and cause of action, but on political corruption as indicated by allegations of this and obstruction of justice by appellant to Assistant U.S. Attorney John A. Terry, letters of September 21, 1978 (5 pages), letter of September 14, 1978 (3 pages) appellant to Mr. Terry with attached letter from appellant to Dr. Richmond (3 pages) dated September 13, 1978, and letter from appellant (3 pages) to Dr. Richmond dated September 12, 1978, all given to Mr. Terry in his official capacity as Assistant U.S. Attorney on these litigations and reproduced as Appendix G.

Furthermore, the Court of Appeals was given a copy of appellant's March 1, 1981 letter involving political corruption and obstruction of justice in 75-1817 and 79-2470 following March 1, 1981 and well before their denial of Petition for Rehearing. The illegal electronic surveillance improperly placed under national security to avoid discovery by appellant is cruel and unusual punishment under the Eighth Amendment, Dr. Mazaleski's letter to Attorney General William French Smith and the Clerk, and U.S. Court of Appeals for the District of Columbia Circuit is reproduced as Appendix H.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals for the District of Columbia Circuit significantly undermines appellant

and some 6000 Commissioned Corps Officers, U.S. Public Health Service to their right to Equal Protection and Due Process under the Fourteenth Amendment to the U.S. Constitution. The material facts, no equal protection, cause of action; and the issue of standing are in serious dispute, yet have been prejudicially and unfairly adjudicated against, not on the merits, but for illicit political means. Appellants doing the same or similar work as civil servants are denied Constitutional protection and rights under the Fourteenth Amendment. The denial of these rights has no rational basis. Denial of these constitutional rights clearly constitutes a violation of the Fourteenth Amendment, as incorporated into the Fifth Amendment. The Court of Appeals for the District of Columbia Circuit clearly conflicted with itself during the six year adjudication of this Class Action and infringed on the right to pursue *de novo* the Due Process Claim in 75-1817, since it was well documented before the Court of Appeals an obstruction of justice in both 75-1817 and 79-2470. Awarding summary judgment to the defendants/appellees clearly conflicts the property rights of appellants in *Gross v. Lopez*, 419 U.S. 565 (1975), *Paul v. Davis*, 424 U.S. 693 (1976), and the 14th Amendment and other cases cited herein. For this reason, certiorari should be granted to review the decision of the Court of Appeals for the District of Columbia Circuit in 79-2470.

CONCLUSIONS

This Court should grant certiorari to allow the serious and significant dispute of material facts to be equitably and fairly adjudicated on the merits, and not on politics, as has been done. Also because the lower Court has so far departed from the accepted and usual course of

judicial proceedings, masked under color of law, and has so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision to insure that the U.S. Constitution is not subverted, that men not be above the laws of this land, and that appellants be given their Fourteenth Amendment rights as guaranteed by the United States Constitution, especially since appellants are charged with faithfully protecting the public health, safety, and interest of all citizens. That if any procedural errors that may have been made by appellant *pro se* are respectfully asked to be waived, while appellant represents his Constitutional rights *pro se*, a condition beyond his control.

Respectfully,

/s/ STANLEY C. MAZALESKI, *PRO SE*
3931 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

CERTIFICATE OF SERVICE AND NOTICE OF SERVICE

I, Stanley C. Mazaleski, certify that the original and forty copies of this PETITION FOR A WRIT OF CERTIORARI dated January 27, 1982 and notarized January 27, 1982 were hand delivered to the Clerk, January 27, 1982, United States Supreme Court, Washington, D.C. 20543, and three copies mailed January 27, 1982 first class mail, postage prepaid to the Solicitor General, Department of Justice, Washington, D.C. 20530.

/s/ STANLEY C. MAZALESKI, *PRO SE*

Appendix

APPENDIX A

NOT TO BE PUBLISHED – SEE LOCAL RULE 8(f)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1980

No. 79-2470

[Filed: Sep. 30, 1981]

(No Opinion)

STANLEY C. MAZALESKI,
on behalf of himself and all others
similarly situated,
Appellant,

v. **Civil Action No. 75-0997**

RICHARD S. SCHWEIKER,
his agents, employees, servants, successors
as Secretary, Department of Health and
Human Services

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Before: MacKINNON and WILKEY, Circuit Judges and RICHEY,* United States District Judge for the District of Columbia.

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* Sitting by designation pursuant to 28 U.S.C. § 292(a).

JUDGMENT

This cause came on for consideration on the record on appeal from the United States District Court for the District of Columbia, and briefs were filed herein by the parties. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c).

On consideration of the foregoing. It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause is hereby affirmed on the basis of the District Court opinion.

Per Curiam

For the Court

/s/ George A. Fisher
Clerk

Bills of costs must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1981

No. 79-2470

[Filed: Oct. 30, 1981]

STANLEY C. MAZALESKI,
on behalf of himself and all others
similarly situated,
Appellants

v. **Civil Action No. 75-0997**

RICHARD S. SCHWEIKER,
his agents, employees, servants, successors
as Secretary, Department of Health
and Human Services

BEFORE: MacKinnon and Wilkey, Circuit Judges, Richey,* Judge, United States District Court for the District of Columbia.

ORDER

On consideration of appellants' petition for rehearing, filed October 14, 1981, it is

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*Sitting by designation pursuant to Title 28 U.S.C. § 292(a).

ORDERED by the Court that the aforesaid petition is denied.

Per Curiam

FOR THE COURT:

George A. Fisher, Clerk

By: /s/ Robert A. Bonner
Chief Deputy Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1981

No. 79-2470

[Filed: Oct. 30, 1981]

STANLEY C. MAZALESKI,
on behalf of himself and all others
similarly situated,
Appellants

v. **Civil Action No. 75-0997**

RICHARD S. SCHWEIKER,
his agents, employees, servants, successors
as Secretary, Department of Health
and Human Services

BEFORE: Robinson, Chief Judge, Wright, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, Circuit Judges, Richey,* Judge, United States District Court for the District of Columbia.

ORDER

Appellants' suggestion for rehearing *en banc* has been circulated to the full Court and no member of the Court, or of the panel, has requested the taking of a vote thereon. On consideration of the foregoing, it is

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*Sitting by designation pursuant to Title 28 U.S.C. § 292(a).

ORDERED by the Court *en banc* that appellants' suggestion is denied.

Per Curiam

FOR THE COURT:

George A. Fisher, Clerk

By: /s/ Robert A. Bonner
Chief Deputy Clerk

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-997

[Filed: Nov. 6, 1979]

STANLEY C. MAZALESKI,
Plaintiff,

v.

PATRICIA ROBERTS HARRIS, *ET AL.*,
Defendants.

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants' Motion for Summary Judgement in an action brought by Stanley C. Mazaleski against Patricia Roberts Harris. Plaintiff was a commissioned health officer in the United States Public Health Service of the Department of Health, Education, and Welfare. Defendant is the Secretary of the Department of Health, Education and Welfare. Plaintiff alleges (1) that commissioned health officers are denied access to all civil service protection, (2) that there is no rational basis for this denial, and (3) that this constitutes a violation of the Equal Protection Clause of the Fourteenth Amendment, as incorporated into the Fifth Amendment. Defendants' Motion asserts that Plaintiff's claim is barred either by *res judicata* or because Plaintiff lacks standing. This Court has jurisdiction under 28 U.S.C. § 1331.

This case has a long and troubled history. Plaintiff was terminated as an officer in the Commissioned Corps of the Public Health Service on June 6, 1975. On June 5, 1975, and June 20, 1975, Plaintiff filed two suits in which he challenged the dismissal on constitutional grounds. In the first suit (*Mazaleski I*), Plaintiff alleged that Defendant terminated him because he was a "whistleblower," thus, violating his First Amendment rights, and that the procedures employed to terminate him violated his Fifth Amendment Due Process Rights. In the second suit (the instant case) Plaintiff alleged that the termination procedures violated his Fifth Amendment Equal Protection rights.

On July 20, 1975, the trial judge dismissed *Mazaleski I* for failure to state a cause of action. On September 15, 1975, this Court held that *Mazaleski II* was barred due to *res judicata*. On April 26, 1977, the Court of Appeals remanded *Mazaleski I*.[1] On March 26, 1979, the Court of Appeals vacated this Court's finding of *res judicata*, and remanded *Mazaleski II* "for consideration of the equal protection issue and for such further consideration and proceedings as the District Court deems advisable."

I. *Res Judicata*

It is clear that a judgment must be final before it is entitled to *res judicata* effect.[2] Thus, the trial court's

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[1] 562 F.2d 701 (D.C. Cir. 1977). The Court of Appeals remanded the case to the Public Health Service for exhaustion of Plaintiff's administrative remedies, after finding that the PHS did not comply with its own regulations. That Court also reversed the trial court's order dismissing Plaintiff's First Amendment claims, indicating that if Plaintiff lost in the administrative hearing, he would be entitled to a trial on the First Amendment issue. The PHS has ruled against Plaintiff. Plaintiff has neither appealed this decision nor pursued suit on his First Amendment claim.

[2] *See* McRae v. U.S., 420 F.2d 1283 (D.C. Cir. 1969) at 1285.

decision in *Mazaleski I* can no longer provide the basis for *res judicata.*[3] The Government contends, however, that the Court of Appeals decision provides the basis for *res judicata.* Its reasoning may be succinctly summarized as follows:

(1) Plaintiff alleged in the complaint that PHS procedures violated his First, Fifth, and Sixth Amendment rights;

(2) The only issues not finally disposed of were the First Amendment claim and the agency's failure to comply claim;

(3) The Court of Appeals specifically held that PHS termination procedures do not violated the due process clause of the Fifth Amendment;[4]

(4) This finding inferentially included Plaintiff's equal protection claim; and

(5) Therefore, the equal protection claim was finally disposed of, along with Plaintiff's due process claim, in *Mazaleski I.*

A judgment is final regarding a specified cause of action only if that action could not become affected by further proceedings in the court where the judgment was rendered.[5] Thus, "if the original judgment has been set aside or reversed, and further proceedings are directed, such as a new trial, rules of *res judicata* are not applicable until new judgment is rendered."[6] In *Mazaleski I,* the

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[3] No final judgment has been entered in Mazaleski I; the First Amendment issue is still ripe for adjudication.

[4] 562 F.2d 701 at 709-715.

[5] *See* New York v. Cathedral Academy, 434 U.S. 125 (1977) at 128, n.4.

[6] East Bay U. of Mich., Local 1304 v. Fibreboard Paper Prod. Corp., 285 F. Supp. 282 (N.D. Ca. 1968), at 286, aff'd, 435 F.2d

[footnote continued]

original judgment was reversed, with the exception of the procedural due process issue. Only that issue could remain unaffected by further proceedings in the trial court; thus only judgment on that issue is entitled to *res judicata* effect. The Court of Appeals did not consider Plaintiff's equal protection claim, however. It did not preclude Plaintiff from attempting to argue that claim. Consequently, this Court cannot bar the equal protection claim on the basis of *res judicata.*

II. *Standing*

Standing focuses on whether the proper party is before the Court. Plaintiff must demonstrate (1) a distinct and palpable injury[7] and (2) a fairly traceable causal connection between the claimed injury and the challenged conduct.[8] To comport with the second prong of the standing test, Plaintiff must show that "the exercise of the Court's remedial powers would redress the claimed injuries."[9]

Plaintiff is no longer with the PHS, and does not seek reinstatement as relief for his alleged injuries. Rather, he requests a ruling that the termination procedures used by the PHS are constitutionally infirm and an Order requiring the agency to utilize procedures which are constitutionally sound. The relief Plaintiff seeks would in no way benefit him. New procedures would not be

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556 (9th Cir. 1970). *See also* Restatement of Judgments § 41, Comment d.

[7] Warth v. Seldin, 422 U.S. 490 (1975) at 501.

[8] Arlington Heights v. Met. Housing Dev. Corp., 429 U.S. 252 (1977).

[9] Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59 (1978) at 74.

advantageous to him because he is no longer with the PHS and does not seek reinstatement. His reputation would not be enhanced by a judgment in his favor[10] because the alleged equal protection violation is in no way related to the purported injury to reputation.[11]

Accordingly, it is by the Court this 6th day of November, 1979,

ORDERED, that Defendants' Motion for Summary Judgment be and hereby is GRANTED.

/s/ Aubrey E. Robinson, Jr.
United States District Judge

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[10] *See* Southern Mutual Help Assn., Inc. v. Califano, 574 F.2d 518 (D.C. Cir. 1977).

[11] Plaintiff's reputation could have been invidiously injured if the termination procedures violated due process or if Plaintiff was removed because he was a whistleblower. The former claim has been dispensed with by the Court of Appeals in *Mazaleski I*, and the latter claim is still actionable. There is no nexus between his injury and the alleged equal protection claim, however. Without such a nexus, the relief sought could not redress the injury allegedly suffered.

APPENDIX E

November 8, 1978

Julius B. Richmond, M.D.
Assistant Secretary for
Health and Surgeon General
U.S. Public Health Service, HEW
Humphrey Building
Washington, D.C. 20201

Dear Defendant Richmond:

I appeal your decision of October 30, 1978 to sustain the decision of Mr. Lee W. Smith to remove me from the U.S. Public Health Service which took effect on July 10, 1975.

The reasons I give are believed to be a true appraisal of what you did improper and in bad faith and why you did it:

1. That it was impossible for you to give me a fair hearing on August 14, 1978 because you are a major defendant and denied me reinstatement because you served your own self interests and those of Theodore Cooper, M.D., former Assistant Secretary of Health, HEW and those of David Sencer, M.D., former Director of the Center for Disease Control (CDC), parent agency for the National Institute for Occupational Safety and Health (NIOSH). Both Cooper and Sencer are believed to be frauds and conspirators in Mazaleski v. Truesdell et al., 75-1817.

2. That you and your staff willfully violated the Freedom of Information Act and the Privacy Act when you denied my new attorney a copy of my complete personnel files on or about July 26, 1978 when John F. Bufe asked Donald Larson, Director of CPOD for these

records to prepare for my defense and reasons for reinstatement before you on August 14, 1978. You also violated these Acts earlier in 1978 when I was preparing for my defense and reinstatement through my former Attorneys Kahn and Schwartz.

3. That the "ailegations" against me have never been proven at a hearing, involuntary separation board, District Court or Appeals Court, and to this day I have been denied by HEW the basic Constitutional Rights of Due Process, Equal Protection, and Free Speech.

4. That the "Neustadt Report" entitled "The Swine Flu Affair" all but indicts David Sencer, M.D. and Theodore Cooper, M.D. as being negligent and incompetent. Both administrators were fired by President Carter when he took office.

5. That you and your staff violated the Commissioned Corps regulation in dismissing me because you would not follow the recommendation of your own Special Investigator, Dr. Truman McCasland in his Report of September 3, 1974 when he said that the "Special COEPRS" by Keith H. Jacobson was "totally inappropriate" and that I be transferred to a new duty station. Dr. Charles C. Edwards, former Assistant Secretary for Health also recommended that I be transferred but these recommendations were ignored, and indicate extreme prejudice by Public Health Service Officials, especially Dale H. Truesdell, former Director of the Commissioned Officers Division, PHS, HEW and major defendant in this litigation.

6. That you acted in bad faith with gross prejudice by limiting yourself to the narrow area of unproved "allegations" on October 30, 1978 therefore subverting the intent of the U.S. Court of Appeals to start "de

Novo" to look at the motives and adverse work conditions and mismanagement, malfeasance by NIOSH managers as indicated in the GAO Reports of September 28, 1973 when I was first hired at NIOSH and the very critical GAO Report of May 10, 1977 which I was responsible for having initiated.

7. That charges of fraud, conspiracy to obstruct justice, concealment of important material facts in the court records, probably done by Tim White and Dale Truesdell, have been made and documented in my documents presented to you during my administrative hearing August 14, 1978, and in my affidavit of August 28, 1978 with attachments. Perjury by Truesdell also.

8. That you and your staff willfully and maliciously violated the Freedom of Information Act and the Privacy Act on or about October 2, 1978 in response to Congressman Norman Steer's written request of September 4, 1978 to you, by concealing the major part of the evidence which was attached to my affidavit of August 14, 1978 as part of the permanent Public Health Service Record.

9. That you misconstrued what the U.S. Court of Appeals said about due process in 75-1817, and Tim White in his correspondence to Rupert Moore said that HEW did indeed compromise my Due Process Rights.

10. That by ignoring and concealing important material facts which I presented you on August 14, 1978 on fraud and other violations of the Criminal Code, 18 USC, you have become an accomplice, and a part of what you try to conceal.

11. That I ask for your full formal written and approved hearing procedures which you allege give me due process, especially during my administrative hearing

before you on August 14, 1978. This is a Freedom of Information Act and Privacy Act Request.

12. That you give me under the Freedom of Information Act and Privacy Act a certified statement and list of all the documents and evidence which you said you reviewed in denying me reinstatement on October 30, 1978.

13. That under the Freedom of Information Act and the Privacy Act you give to me in ten days of receipt of this letter, a copy of all correspondence, notes, tapes, meetings, names of persons attending, dates what have you from the White House, HEW, EPA, OSHA, Attorneys Kahn, Schwartz, Pellerzi, The Civil Service Commission, CDC, NIOSH and any other government agency including GAO in regard to the decision not to reinstate which took almost three months to make.

I shall expect you to fully comply this time with the Freedom of Information Act and the Privacy Act requests I have herein made to you.

With best wishes, I am

Sincerely,

/s/ Stanley C. Mazaleski, Ph.D.

cc: John F. Bufe, Esquire
John R. Hansen, Esquire
Joseph A. Califano, Jr.
Secretary, DHEW
President Jimmy Carter
Vice President Mondale

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 79-2470

[Received: Oct. 14, 1981]

STANLEY C. MAZALESKI, *ET AL.*,
Appellants

v.

RICHARD M. SCHWEIKER, *ET AL.*,
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETITION FOR REHEARING AND SUGGESTION FOR REHEARING *EN BANC*

STANLEY C. MAZALESKI, PH.D.
PRO SE
583 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

SERVICE ACKNOWLEDGED DATE: 10/14/81
BY: /s/ B. Hall
FOR: THE U.S. ATTORNEY, WASH., D.C. 20001

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 79-2470

STANLEY C. MAZALESKI, *ET AL.*,
Appellants

v.

RICHARD S. SCHWEIKER, *ET AL.*,
Appellees

CONCISE STATEMENT OF ISSUE AND ITS IMPORTANCE

Appellant *pro se* respectfully submits that this Court in its *one sentence JUDGMENT, with No Opinion, and not to be published* filed Sep. 30, 1981 misapprehended and misconstrued its own Court Rules, with grave and permanent injury to appellants, the meaning of the U.S. Public Health Service Regulations and as a result in error held that Commissioned Officers in the Public Health Service do not have a property interest in their employment protected under the 14th Amendment Equal Protection and Due Process Clauses to the U.S. Constitution. Because this Court's decision affects appellant and some 6000 Commissioned Corps Officers in the Public Health Service in a most injurious, permanent, arbitrary, and capricious manner, in error, in inequity, and inconsistent with the Constitutional safeguards of the 14th Amendment Equal Protection and Due Process Clauses in that ". . . nor shall any State deprive any person of life, liberty, or property, without due process

of law, nor deny to any person within its jurisdiction the equal protection of the laws," appellant submits that the issue of whether he as a Commissioned Corps Officer had a property interest in his employment is of exceptional importance. Appellant further submits that this Court's decision is in conflict with the Supreme Court decision in *Gross v. Lopez*, 419 U.S. 565 (1975), and *Paul v. Davis*, 424 U.S. 693 (1976), and the 14th Amendment.

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Process Due Appellant Ref. BRIEF FOR APPELLANTS 79-2470 Received JUL 14 1980 USCA & Appendix 1 9-10
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TABLE OF AUTHORITIES

All Cases, Statutes and Commissioned Corps Personnel Manual referenced in BRIEF FOR APPELLANTS 79-2470 Rec. Jul 14, 1980 USCA & page ii Table of Authorities

and

Mazaleski v. Truesdell, 75-1817, U.S. Dist. Cir., D.C. Apr 26, 1977

14th Amendment U.S. Constitution, Equal Protection Clause and Due Process Clause

Appellant, STANLEY C. MAZALESKI, *Pro Se*, pursuant to Rule 40, Federal Rules of Appellate Procedure, hereby petitions this Honorable Court to rehear the issues raised by this appeal and respectfully suggests that rehearing be granted *en banc*. As grounds therefore, Appellant MAZALESKI respectfully submits that this Court misapprehended and misconstrued certain matters of law and fact related to this appeal in its Judgment with NO OPINION filed SEP 30, 1981 which was arbitrary, capricious, and gravely injurious in substance and procedure in regard to the 14th Amendment Equal Protection and Due Process Clauses affecting appellant and some 6000 fellow U.S. Commissioned Corps Officers in the same or similar situation. These points of law and fact have been set forth more fully in Appendix 1 to BRIEF FOR APPELLANTS 79-2470 filed, received JUL 14, 1980, and in REPLY BRIEF FOR APPELLANTS 79-2470 received USCA SEP 30, 1980 with Appendices 1-19, and in Appellants *Pro Se* "Motion . . . and . . . Answer . . ." dated, filed August 8, 1978 USCA with Exhibits 1-38 which are all fully incorporated by references along with all other Court Documents, either filed, or lodged, and all documents in 75-0997, 75-2251 and 79-2470, which could not have been equitably and justly reviewed in the short time before this honorable court, before its issuance of its *NO OPINION, one line JUDGMENT, September 30, 1981 which will not be published.*

Appellant asserts that this Court, the Clerk's Office, and the U.S. Attorney's Office could not have acted in

good faith these past 6 years in processing and adjudicating this Class Action 14th Amendment Equal Protection case at bar for the following reasons: The lower Court Judge, Aubrey Robinson, twice failed to certify the Class in 6 years and gave no reason for his failure which has greatly and irreparably injured appellant and some 6000 Commissioned Corps Officers in this Class Action litigation, improperly and in error denying them certification as a Class. Two times in 6 years Judge Aubrey Robinson was given the opportunity to equitably give appellant redress, had *prima facia* evidence that appellant appealed to the Assistant Secretary for Health, DHEW, Dr. Julius B. Richmond, on November 8, 1978 for *reinstatement,* by the lower Court Judge ignoring the very *prima facia* documents, evidence on standing, and in gross error, improperly ruled that appellant had no standing, when in fact appellant did, and the eivdence before Judge Aubrey Robinson unequivocally showed standing. *Prima facia* evidence on equal protection, due process, and free speech, and documented evidence on obstruction of justice and perjury by NIOSH, PHS managers were improperly removed in August-September 1978 with great injury to appellants in 75-2251. Later, while appellants had a counsel of record, Attorney Kent was first told she could write a "Brief", then later, arbitrarily and capriciously Chief Judge Wright denied the writing of that "Brief" necessary to defend the Constitutional Rights of appellant and the Class, no reason was given. The case was remanded back to Judge Robinson, for the second time, the same Judge in 6 years, again he failed to certify the "Class", no reason given, thereby acting arbitrarily and capriciously, greatly and permanently injuring appellant and the "Class" of 6000 Commissioned Corps Officers before the law. *Res Judicata* was overturned, the issue of "standing" was

improperly, in error, and injuriously brought forward to irreparably harm appellant, the Class, and unfairly, unjustly, and improperly deny appellant Mazaleski reinstatement, and greatly injure the Free Speech case and Absolute libel/slander case before the USCA. The electronic surveillance of appellant improperly placed under national security believed to have been done by the Carter White House for illicit political purposes has irreparably damaged appellant, is cruel and unusual punishment, duress, uncalled for, and an 8th Amendment Constitutional violation, causing appellant and Class great and irreparable harm in their failure to get an attorney able to properly defend their Constitutional Rights before the law and Court. Appellant asserts that this Court has been prejudiced in administering equitably, in a timely manner, without justice, the adjudication of this case, and the record shows that Court Rules were manipulated in bad faith to improperly, and in error, the downgrading of a "Meritorious Equal Protection Claim", and by improperly bringing forth an irrelevant issue of "standing" after a "Meritorious Claim on Equal Protection" was given March 26, 1979, and *prima facia* evidence on appeal for reinstatement, and standing was ignored to great detriment and irreparable damage to appellant. Dr. Richmond arrogantly abused his position of authority before, during, and after the August 14, 1978 hearing with appellant Mazaleski for reinstatement by denying under repeated Freedom of Information Act and Privacy Act requests for needed appellant's official personnel files, and ignoring extensive *prima facia* evidence on NIOSH, PHS waste, mismanagement, misconduct, and fraud.

The hearing of August 14, 1978 for appellant with the Assistant Secretary for Health, DHEW, Dr. Richmond,

was administratively infirm for due process and equal protection, appellant already had won on Free Speech and Administrative error in 75-1817, *Mazaleski v. Truesdell,* and is waiting for this U.S. Court of Appeals to reinstate appellant, appellant Mazaleski definitely has "standing" in 75-1817 and should be reinstated now since the hearing of August 14, 1978 was "infirm, biased." Appellant respectfully asks this Honorable Court for immediate, and full reinstatement with all rights and benefits for himself and his family, and that this Court expedite a fully written OPINION at this time and award the appellant and Commissioned Corps Officers 14th Amendment Equal Protection and Due Process rights by Court Mandate.

That there is a likelihood that the moving party appellants, will prevail on the merits since this Court already recognized a meritorious claim of Equal Protection (*Mazaleski v. Califano,* No. 75-2251, D.C. Cir., March 26, 1979). That this Court ruled in error ORDER Aug. 4, 1981 by withholding information on electronic surveillance of appellant, appendices "lodged only" *prima facia* evidence locked out of public record, ORDER Sep. 18, 1981 downgrading, neutralizing this "Class Action", Equal Protection Claim improperly and in error using Rule II(d) but giving no reasonable or substantial basis not to allow *"ORAL" Argument* needed to clarify serious government errors and improprieties, with major material facts and merits such as "standing" which is in serious dispute, *ignored.* The issue of "standing" improperly raised by the government, the second time around, and adjudicated in favor of the government, and in error, is not even a *"Cause of Action"* and was never raised by plaintiffs/appellants, is moot, and the Equal Protection Claim is the controlling material fact,

along with the due process claim erroneously adjudicated against in 75-1817 because of government obstruction of justice and perjury. The only causes of action are Equal Protection and due process reversely incorporated in the 14th Amendment Equal Protection Clause.

This Court also misapprehended the importance of Equal Protection Claim ORDER Sep. 30, 1981 by improperly and in error applying Local Rule 13(c) stating ". . . no need for an opinion . . ." when in fact there is a compelling need because of the Equal Protection Claim for a written opinion on the material facts and law which are in serious dispute. Oral argument is essential. The way it now stands, the record is not "Square," there is no way for appellant, 6000 Commissioned Officers, the legal profession, or the public, and its interest, to know on what basis this Court actually adjudicated, and arbitrarily and capriciously cast their 14th Amendment Equal Protection Claim and Rights aside, putting men above law, ruling with *no opinion*, ruling with no basis in favor of the Lower Court which is in serious error on material facts and the merits; when in fact an earlier panel of Judge, *all* from the U.S. Court of Appeals, ruled there was an Equal Protection Claim March 26, 1979, and this *September 30, 1981 one line JUDGMENT, NO OPINION, not to be published,* is erroneously in favor of the government, is arbitrary and capricious, denies the Equal Protection Claim already considered and ruled on as meritorious by this U.S. Court of Appeals *two years earlier* and with prejudice to due process in 75-1817, and August 14, 1978 hearing for reinstatement because of obstruction of justice. In addition, appellants assert, not to impugn any judge's character without cause, that it may not be proper, and is injurious to appellant and Class Equal Protection

Claim, by having, although apparently legal in this situation under 28 U.S.C. 292(a), Judge Richey, U.S. District Judge, as part of this U.S. Court of Appeals adjudication. It may not be proper since this lower Court Judge is an associate and co-worker on the U.S. District Court for D.C. with Judge Aubrey Robinson, the Judge who twice failed to certify this Class Action in a 6 year period and has given no reason for his failure. Judge Richey ruled in favor of Judge Robinson's decision on Sep. 30, 1981. Under these conditions, this may well be improper and prejudicial. That Sep. 30, 1981 one line JUDGMENT with No Opinion did irreparable injury to appellant and the Class of Commissioned Corps Officers with no Equal Protection or Due Process rights. That the *Hearing* August 14, 1978 with Dr. Julius B. Richmond, Assistant Secretary for Health and Surgeon General, was administratively infirm, was prejudicial, there was no due process or equal protection, no guidelines, no record, no minutes, no witnesses to cross examine, it was a farce. Commissioned Corps Officers have no due process or equal protection rights. That DHEW Dr. Richmond, Dale Larson, PHS, Tim White, DHEW, and John Droke had violated Freedom of Information Act and Privacy Act requests *before, during,* and *after* requests for essential personnel files, official personnel records which appellant did not have, was entitled by FOIA/PA to have, and needed for presentation for reinstatement in the Public Health Service as a Commissioned Corps Officer, DHEW. This is a denial, most unfairly, of due process and equal protection affecting both the Free Speech litigation (75-1817) and this Equal Protection Claim at bar, and the Absolute Immunity Libel/Slander litigation in the USCA 4th Circuit which also has an obstruction of justice, with an obvious miscarriage of justice. The lower Court brought in the issue of "standing" late, the

second time around in 6 years, before the same Judge, who twice failed to Certify the Class, no reason given. The "standing" issue was not a "cause of action" by plaintiffs/appellants, therefore, with these errors, material facts and merits seriously in dispute, including the lower Court locking out future adjudication in error, improperly, and unfairly, in the Free Speech case, *Mazaleski v. Truesdell,* 75-1817, which goes to trial *De Novo,* the issue of due process, which this lower Court had no part in adjudicating, and which the government (Tim White to Ruppert Moure, April 29, 1977, memorandum) admitted compromising due process, and which the records before this Court and this U.S. Attorney's Office documents obstruction of justice and concealment of *prima facia* evidence, material facts of misconduct by NIOSH supervisors Jon May and Howard L. McMartin; appellants feel that when these facts are properly, openly, fairly, and timely reviewed because the Free Speech and Equal Protection meritorious claims are already awarded appellant, that appellants will prevail on the material facts, merits and law.

That the prospect of irreparable injury to the moving party appellants, if relief is withheld, is herein established above in that the Equal Protection and Free Speech rights guaranteed by the U.S. Constitution will be decimated—irreparable injury for all time. For example, the Director of NIOSH, Dr. Anthony Robbins, was summarily fired by Secretary Schweiker, Appellee, on or about March 4, 1981 for what was stated in the press as political purposes. It is believed that that firing, with cause, was done in one day, and could take place because Dr. Robbins gave up his Equal Protection and Due Process rights by moving from a Civil Service protected position to an unprotected U.S. Public Health

Service Commissioned Corps Officer's job, doing the same work, with the same mission, same people, in the same place. Appellants assert that this is a clear demonstration of lack of Equal Protection, and Due Process, and that the U.S. Commissioned Corps Regulations are substantively and procedurally infirm and unconstitutional.

That there is no possibility of harm to other parties if relief is granted, in fact this Equal Protection Claim can do nothing but good for appellants, appellees, the public good since Equal Protection is a Constitutional Right for citizens, that even the government cannot legally deny. It is the law of the land, the will of the people, for *all citizens,* regardless of their work, creed, occupation, and status.

That the relief requested is in the public good since OSHA Act of 1970 mandates that NIOSH, including Commissioned Officers, and Civil Servants doing the same or similar jobs protect the public interest from cancer causing chemicals and other dangerous substances. Appellant in *Mazaleski v. Truesdell,* 75-1817, won a Free Speech meritorious Claim over going "public" to Congress and the press over the cancer issue and national cancer policy pursuant to OSHA Act of 1970 and was summarily fired without a grievance procedure, Free Speech, Due Process, and Equal Protection rights. The Equal Protection sought by appellants will be in the best interest of this country and every one of our citizens.

That appellant be immediately reinstated because the Public Health Service acted in bad faith on FOIA/PA requests for official personnel records needed for reinstatement at hearing August 14, 1978, there was no due process or equal protection during that hearing with Dr. Richmond, the hearing was constitutionally infirm for

due process and equal protection, there were numerous FOIA/PA violations before, during, after the August 14, 1978 hearing, *prima facia* evidence on reinstatement was ignored, the USCA in *Mazaleski v. Truesdell,* 75-1817, can now reinstate appellant Mazaleski, and appellant respectfully asks for immediate reinstatement now, and that this Court rule in favor of appellants on Equal Protection and due process claims under 14th Amendment. Appellant was framed.

That, if any procedural errors that may have been made by appellant *pro se* are respectfully requested to be waived, while appellant represents his Constitutional and Civil Rights *pro se,* a condition beyond his control. This day of our Lord Wednesday, October 14, 1981.

/s/ Stanley C. Mazaleski
Pro Se
583 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

CERTIFICATE OF SERVICE

I, Stanley C. Mazaleski, certify that a copy of the foregoing PETITION FOR REHEARING AND SUGGESTION FOR REHEARING *EN BANC* was hand delivered by me Wednesday, this day of our Lord October 14, 1981 to John A. Terry, Esquire, U.S. Department of Justice, Office of the U.S. Attorney for the District of Columbia, U.S. Courthouse, 3rd & Constitution Avenue, N.W., Washington, D.C. 20001.

/s/ Stanley C. Mazaleski
Pro Se
583 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

APPENDIX G

September 21, 1978

John A. Terry, Esquire
Assistant U.S. Attorney
Room 3820
U.S. Court House
3rd & Constitution Avenue
Washington, D.C. 20001

Dear Mr. Terry:

The epitome of political corruption is when the chief magistrates of this great country of ours, the President and Vice President of the United States fail to administer and enforce the law.

The epitome of political corruption is when the chief investigative agencies of the United States, the General Accounting Office and the Department of Justice fail to investigate charges of fraud and political corruption and other civil and criminal abuses.

The epitome of political corruption is when Members of Congress, both in the Senate and House of Representatives of the United States sit-on or actually help conceal these crimes against the U.S. Civil and Criminal Codes of our country.

A basic tenet of our law is that when a crime is committed, and an observer sees the crime or is informed of it, but willfully does nothing about it, then that person or persons become a part of the illicit and criminal act as accomplices.

This holds true, whether they are an average citizen or public and elected servants in our governmental service.

On September 14, 1978 I personally informed you by my letter to you dated September 14, 1978 (enclosure) of these civil and criminal violations. I asked to hear from you in ten days.

On August 17, 1978 I informed my boss, Barbara Blum, Deputy Administrator, EPA and close friend and associate of President Carter about fraud and merit promotion abuses and other serious activities in her Office of Personnel, and in her Occupational Health and Safety Office at headquarters. Copies of my letter to Ms. Blum with 54 enclosures were sent to President Carter and Vice President Walter Mondale at that time.

Nothing has been heard from them to date. A meeting was requested.

Senator Kennedy, Congressman Flood, and Congressman Byron are directly involved in this "coverup." They have known for at least three years about the fraud and corruption at NIOSH and for over one year the fraud and corruption with reprisal at EPA's Occupational Health and Safety Office. OSHA is also in on it. So is GAO, and Senator Kennedy's staff investigators.

This fraud and coverup at NIOSH and EPA makes what's going on at GSA look like child's play.

Vice President Mondale and Chairman of the Civil Service Commission Mr. Alan Campbell and AFGE General Counsel Lou Pellerzi were formally notified of these civil and criminal violations at NIOSH and EPA with reprisal, in November 1977, yet nothing was done. The coverup continues to this day. Why?

The recent GAO press release this last week on fraud in our government is the height of hypocrisy because Mr. Gregory Ahart, GAO knew about fraud in NIOSH contracting two years ago and failed to *audit* as requested by me several times over a two year period. Nothing has

been done about the gross malfeasance and mismanagement at NIOSH either. Why? Mr. Oliver Krueger, GAO at EPA and Mr. Jim Michie, Senator Kennedy's staff investigator investigating EPA's Occupational Health and Safety Office when the Republicans were in the White House, stopped investigating when the Democrats got in. Why? There was a willful and deliberate discontinuation of the investigations in that Office, while abuses and political corruption intensified and accelerated. Again, I respectfully ask why? I even notified Attorney General Griffin Bell personally by certified mail on February 8, 1978 about these things through a copy of my letter to Oliver Krueger, GAO at EPA on that date, and I have heard nothing from Mr. Bell. Mr. Bell is also involved in the "Marston" Case with Congressman Flood.

Are these the reasons why no one is investigating? Are these the reasons why our civil and criminal laws are being subverted and being made a sham of?

As a native born American and citizen, taxpayer of this great country of ours, I again ask that you and the Department of Justice do your job and investigate and prosecute these government managers at NIOSH and EPA involved in fraud and corruption. GAO should have more than their hands slapped for failing to do their job. I don't know what to do with the Congressman, but the question of integrity or lack of it is appropriate, and maybe the voters will make the "appropriate corrections" during the elections.

For the permanent record before you and the Department of Justice I respectfully enclose the following documents:

1. Stanley C. Mazaleski to John A. Terry, Esquire dated September 14, 1978 and signed for by Barbara Hall September 14, 1978.

2. Stanley C. Mazaleski to Barbara Blum, Deputy Administrator, EPA letter dated August 17, 1978 with attached enclosures 1-5 for a total of 54 exhibits.

3. Affidavit dated August 14, 1978 in *Mazaleski v. Truesdell, et al.*, 75-1817, presented to Dr. Julius B. Richmond during my administrative hearing August 14, 1978 (please obtain the exhibits from Dr. Richmond).

4. Written rebuttal by John F. Bufe, Associate General Counsel, National Treasury Employees Union to Dr. Julius B. Richmond dated and delivered August 28, 1978 as part of the permanent hearing record in 75-1817.

5. Cover letters from Stanley C. Mazaleski to Dr. Julius B. Richmond dated August 28, 1978 and August 29, 1978 with my handwritten affidavit of August 28, 1978, notarized August 29, 1978 attached (please obtain the many exhibits from Dr. Richmond).

6. List of Exhibits for the affidavit of August 28, 1978 which I presented as Appellant to Dr. Julius B. Richmond as part of the permanent hearing record in 75-1817.

7. Memorandum, dated November 27, 1974, To: For the Record, from: Stanley C. Mazaleski, Subject: Meeting with E. H. Bennett III of Personnel in room 18A-54 from about 10:00 A.M. to 10:30 A.M. November 27, 1974 ref. Untrue statements by Keith H. Jacobson memorandum of October 25, 1974 (this is Exhibit A 135 to Dr. Richmond).

8. Letters, A218 to A223 packet to Senator Kennedy from Stanley C. Mazaleski dated December 17, 1975 (part of exhibits given to Dr. Richmond).

9. Letters A225 to A229 from Stanley C. Mazaleski to Senator Edward M. Kennedy dated November 1, 1976

with enclosures as noted in the list of Exhibits given to Dr. Richmond (attached).

As stated to you on September 14, 1978 in my letter to you, ". . . I do not want to go public with this . . . ." Please give me your written intentions on what you plan to do by September 25, 1978.

Your kindness in expeditiously reviewing these attached documents is greatly appreciated. I strongly suggest that you obtain copies of all documents which were given to Dr. Richmond by me on August 14, 1978 and on August 28, and August 29, 1978 and all correspondence to him concerning my hearing in August 1978. This includes letters to him up to today.

With best wishes, I am

Sincerely yours,

/s/ Stanley C. Mazaleski
Ph.D.

Enclosures: as listed

cc: President Jimmy Carter
John F. Bufe, Esquire
John R. Hansen, Esquire
Msgr. Hugh J. Phillips

September 14, 1978

John A. Terry, Esquire
Assistant U.S. Attorney
Room 3820
U.S. Court House
3rd & Constitution Avenue
Washington, D.C. 20001

Dear Mr. Terry:

On August 8, 1978 I hand-delivered to your office my "Motion . . . and Answer . . ." dated August 8, 1978 and filed by me *pro se* because of extraordinary circumstances in *Mazaleski v. Califano, Secretary, HEW,* Class Action 75-2251, due to a "political sell-out" by Lou Pellerzi, AFGE General Counsel and his paid legal counsel in my litigations, which includes *Mazaleski v. Truesdell, et al.,* Public Health Service, 75-1817, in the U.S. Court of Appeals.

At that time you were given, as was the Honorable Court, exhibits 1-37 as attachments to support my "Answer . . ." why the Class Action should not be dismissed because of lack of prosecution.

On August 22, 1978, after the Honorable U.S. Court of Appeals reviewed my "Motion . . . Answer . . ." in 75-2251 and exhibits 1-37 which you have copies of, they accepted my motion for an enlargement of time to November 5, 1978 to file a brief since I was left stranded at the last minute in both 75-2251 and 75-1817. On August 22, 1978 by ORDER from Chief Judge Wright my former attorneys who withdrew at the last moment in both cases, due to a "political sell-out" in my opinion

and according to the record, were removed as "counsel of record."

Evidence of fraud, misconduct, perjury and corruption was presented to you by me on August 8, 1978 in 75-2251.

Today, I am giving you additional evidence and statements on criminality and corruption of a very serious nature at HEW, and reprisal and similar corruption in EPA's Occupational Health & Safety Office. Congressman Flood, Congressman Byron and Senator Kennedy are very well aware of what's going on illegally in my situation both at EPA and HEW and have been involved directly for about three (3) years, and continue to sit on this fraud and corruption. The GAO also knows of these things, and does nothing. I expect the U.S. Attorney's Office to investigate and prosecute now. I do not want to go public with this. I request that your office do what is required by law to correct these illegalities now, because if not, the failure of correction by the Government could seriously tarnish the image and credibility of the President and Vice President since they have been properly informed of these illegalities, and also because of the current predicament Congressman Flood finds himself, as indicated by his current arraignment on perjury charges in Los Angeles September 11, 1978 as explained to Dr. Julius B. Richmond in my letter to him yesterday on these matters. Mr. Flood is also in the "Marston" case.

For the record, I have enclosed a copy of my letter to Dr. Richmond dated September 13, 1978 sent yesterday via certified mail no. 782003 return receipt requested from Washington, D.C. concerning not only civil violations, but criminal violation which the Justice Department is responsible for.

Also enclosed as part of my correspondence to Dr. Richmond September 13, 1978 is my letter to him dated September 12, 1978 hand-delivered by me on that day and signed for as received by Dr. Richmond's secretary June L. Martin. You may obtain the attachments (exhibits) given to Dr. Richmond at that time.

I ask that you contact me within ten (10) days of receipt of this letter hand-delivered to you today by me, and give me written intentions on what you plan to do in this matter.

With best wishes, I am

Sincerely,

/s/ Stanley C. Mazaleski
Ph.D.

Enclosures: 2
Mazaleski to Richmond 9/12/78
Mazaleski to Richmond 9/13/78

cc: John F. Bufe, Esquire
John R. Hansen, Esquire

Hand-Delivered in Person

Date received: 9/14/78

Received by: Barbara Hall

September 13, 1978

Julius B. Richmond, M.D.
Assistant Secretary for Health
and Surgeon General, U.S.
Public Health Service, DHEW
Humphrey Building
Washington, D.C. 20201

Re: *Mazaleski v. Truesdell, et al.*,
Public Health Service; 75-1817
in the U.S. Court of Appeals

Dear Dr. Richmond:

Yesterday, I hand-delivered to your office documents and evidence pursuant to *Mazaleski v. Truesdell, et al.*, 75-1817, concerning deliverables following my administrative hearing before you on August 14, 1978.

I am compiling in chronological order some fifteen hundred to two thousand documents, many of which show daily activities at NIOSH and the Commissioned Personnel Operations Division, and with members of Congress, especially Congressman Daniel J. Flood and Senator Edward M. Kennedy.

These documents which are very descriptive will leave no doubt whatsoever how NIOSH deliberately delayed many Criteria Documents relating to important high volume chemicals, especially Methylene Chloride and Cadmium. These documents will also show how NIOSH and CPOD improperly and illegally terminated my contractor, HSM-99-73-20, essentially bribed and absorbed the contractor staff according to the records, and fired me because I was a roadblock in their complicity with the chemical industry, especially DOW Chemical Company. If we have to go to trial, this evidence will also be included and added to what I have already given you.

An assessment of the relationship or connection of blood relatives, working in the Office of the newly created Office of The Inspector General, HEW, and Congressman Flood's Washington, D.C. Congressional Office is being done especially as it relates to the General Accounting Office's failure to fully investigate NIOSH in 1976-1977, and complete failure to audit NIOSH Contracts and HSM-99-73-20 with Agatha Corporation, now defunct. It is understood that the new Inspector General is a former GAO manager.

A similar situation exists at EPA in the Occupational Health and Safety Office, which has been under intense investigation by both GAO and Senator Kennedy's Office. All investigative activity by these units of Congress have stopped for almost one year. However, the record shows that the problems there have accelerated.

It is worth noting, that in both Health Regulatory Agencies, NIOSH and EPA's Occupational Health and Safety Office, Congressman Flood has extensive evidence of government managers lying to him, fraud, malfeasance, misconduct, and gross merit promotion abuses, yet he has done nothing about these illegalities and criminality. Senator Kennedy and Congressman Byron are also privy to these things and also do nothing.

For the record, I have enclosed a list of exhibits given to you yesterday as described in my cover letter to you dated and hand-delivered to your office September 12, 1978 (enclosure).

The specific exhibits attached to my September 12, 1978 letter to you as received by your secretary yesterday, June L. Martin are those exhibits in attachment 4 as follows, and in that sequential order: exhibits A89, A85, A121, A122, A123, A131, A132, A133, A135,

A137, A136, A155, A157, A158, A159, A173, A174, A175, A177, A178, A179, A185, A161, A162, A163, A186, A187, A188, A189, A190, A191, A192, A193, A194, A195, A196, A197, A188, A189, A190, A191, A192, A193, A194, A195, A196, A197, A198, A199, A200, A201, A211, A219, A218, A219, A220, A221, A222, A223, A224, A215, A216, A217, A208, A209, A202, A203, A206, A207, A225, A226, A227, A228, A229, A234, A235, A240.

Congressman Flood is Chairman of HEW's Appropriations Committee, and also the Department of Labor's, therefore, Mr. Flood has been influential in both Departments for years. I was directly responsible, and went through Senator Kennedy, to get the GAO to investigate/audit NIOSH and OSHA in 1976-1977. The GAO Report of May 10, 1977, HRD-77-71, is a direct result of this effort, showing gross mismanagement yet nothing was ever done, except give more money. The corruption at NIOSH continues to this day. Why?

I am turning a copy of this letter over to not only Secretary Joseph Califano, but U.S. Attorney John Terry for their purview and records, and appropriate action.

With best wishes, I am

Sincerely,

/s/ Stanley C. Mazaleski
Ph.D.

Enclosure: 1

cc: Secretary Joseph Califano
U.S. Attorney John Terry
John F. Bufe, Associate
General Counsel, NTEU,
Washington, D.C.

P.S. Congressman Flood was arraigned on perjury charges in Los Angeles September 11, 1978 according to the press.

September 12, 1978

Julius B. Richmond, M.D.
Assistant Secretary for Health
and Surgeon General, U.S.
Public Health Service, DHEW
Humphrey Building
Washington, D.C. 20201

Dear Dr. Richmond:

As promised in my affidavit dated August 28, 1978 given to you on that day with many exhibits, I have enclosed a list of exhibits A72 to A240 (attachment 1) which I hand-delivered in person to you in your office today. This lists the August 28, 1978 Affidavit exhibits which are part of the permanent hearing record of August 14, 1978 when I appeared before you as mandated by the U.S. Court of Appeals.

I've also enclosed a copy of my Affidavit of August 28, 1978 which was given to you on August 28, 1978, August 29, 1978 (notarized copy), with a cover letter to you from me on both those days showing receipts of these documents by your secretaries June L. Martin and Mae Wallen (attachment 2).

A list of exhibits given to you on August 28, 1978 as attached to my affidavit is herein enclosed again for your purview and records as attachment 3.

To insure that you are fully aware of the malfeasance, fraud and misconduct by NIOSH and HEW officials

in *Mazaleski v. Truesdell, et al.*, 75-1817, I am again giving you some of the exhibits given to you by me on August 28, 1978 as attached to my affidavit of that date (8/28/78) to high-light correspondence with Congressman Flood, Senator Kennedy, Senator Bayh, Dr. Charles Edwards, the General Accounting Office and others concerning the fraud in contracts at NIOSH, especially HSM-99-73-20, and other NIOSH, Public Health Service illegalities. Some of these exhibits are herein enclosed as attachment 4. If you'll review the attached documents (exhibits) again, you'll see that you have been properly informed about these things such as violation of the U.S. Criminal Code 18 U.S.C. 1001 and others by HEW. Pursuant to the documents given to you by me since August 14, 1978 you and Secretary Joseph Califano cannot say that I have not properly informed you of these activities by HEW.

In closing, I acknowledge receipt of your letter to me on subject documents dated Sep. 1, 1978, but received much later at my home on September 8, 1978. It only takes two days for mail to get from Washington, D.C. to Monrovia, Maryland. Also, you forgot to mention my Affidavit of August 28, 1978 with the many exhibits hand-delivered by me to your office on August 28, 1978 and signed for by your secretaries on August 28, 1978 and again on August 29, 1978. Your September 1, 1978 letter is attachment 5.

My letter to you dated September 1, 1978 clearly lists what had been given to you up to and including September 1, 1978 (attachment 6).

As stated in my letter to you dated September 1, 1978, we shall be waiting for your decision and adjudication, and pray that it is equitable and just.

With best wishes, I am

Sincerely,

/s/ Stanley C. Mazaleski
Ph.D.

Enclosures:
attachments as listed

cc: John F. Bufe, Esquire
Associate General Counsel,
NTEU, Washington, D.C.

P.S. In reference to my affidavit of August 28, 1978, wherever exhibit A1 is mentioned in my affidavit, it should read exhibit A5 "Motion . . . and Answer . . ." filed in the U.S. Court of Appeals by me on August 8, 1978 in *Mazaleski v. Califano, Secretary, HEW*, 75-2251.

Hand-Delivered in Person

Date received: Sept. 12, 1978

Received by: June L. Martin

APPENDIX H

March 1, 1981

William French Smith
U.S. Attorney General
The U.S. Department of Justice
Constitution Avenue & 10th St., N.W.
Washington, D.C. 20530

pursuant to
CSRA 1978

Re: electronic surveillance under
national security by the
Justice Department & FBI
FOIA/PA Requests

Dear Attorney General Smith:

Enclosed please find a copy of my letter to Michael E. Shaheen, Director, Office of Professional Responsibility, U.S. Department of Justice, dated February 23, 1981 with enclosures as listed therein.

The Justice Department and FBI have repeatedly failed to give me evidence requested under Freedom of Information and Privacy Acts concerning illegal electronic surveillance of me improperly put under national security to avoid and prevent discovery.

I believe that former Attorney General Civiletti, President Carter, and Vice President Mondale were directly involved in this, and may have ordered it out of reprisal, and for the purpose of quashing my litigations before the U.S. Federal Courts. These litigations are highly political, directly involved political leaders such as Vice President Mondale, President Carter, Senator Kennedy, Congressman Flood and others, and have extensive fraud, perjury, misconduct, obstruction of justice, concealing *prima facia* evidence and material facts, and collusion by high level government officials.

Mr. John A. Terry, Assistant U.S. Attorney handling my litigations before the U.S. Court of Appeals for the District of Columbia Circuit, D.C., had documented evidence on some of this and either kept it from the Federal Judges or failed to act on it at all. I ask that Mr. Terry be brought in on the carpet concerning documents given to him in September 1978 involving Inspector General, DHEW coverup with the Surgeon General and Assistant Secretary for Health, U.S. Public Health Service Dr. Julius B. Richmond.

There has been serious miscarriages of justice in these litigations I have before the U.S. Federal Courts for myself and some 6000 Commissioned Officers, U.S. Public Health Service. I ask that you negotiate a settlement with me at this time, with full redress and reinstatement in the U.S. Public Health Service and give me the FOIA/PA information requested on illegal electronic surveillance improperly put under national security to avoid discovery. I shall be waiting for your answer and pray that it is favorable. What the government has been doing these past several years in court does not comport with fair play or the Constitution.

With best wishes, I am

Sincerely,

/s/ Stanley C. Mazaleski
Ph.D.

Enclosures:
as listed